

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

1200 19TH STREET, N.W.

SUITE 500

WASHINGTON, D.C. 20036

(202) 955-9600

FACSIMILE

(202) 955-9792

www.kelleydrye.com

DIRECT LINE (202) 887-1230

E-MAIL: Gmorelli@KelleyDyre.com

NEW YORK, NY
TYSONS CORNER, VA
LOS ANGELES, CA
CHICAGO, IL
STAMFORD, CT
PARSIPPANY, NJ

BRUSSELS, BELGIUM
HONG KONG

AFFILIATE OFFICES
BANGKOK, THAILAND
JAKARTA, INDONESIA
MUMBAI, INDIA
TOKYO, JAPAN

RECEIVED

August 15, 2002

AUG 15 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Room TWB-204
Washington, D.C. 20554

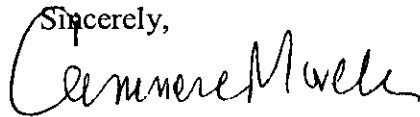
Re: Ex Parte Presentation in CC Docket Nos. 01-338, 96-98, 98-147

Dear Ms. Dortch:

Yesterday, John Patton from MCG Capital Corp., Don Ballard from Access Integrated Networks ("AIN"), Tom Koutsky from Z-Tel, Joseph Gillan, and the undersigned, all representing the Promoting Active Competition Everywhere ("PACE") Coalition, met with Christopher Libertelli of Chairman Powell's office and Matthew Brill of Commissioner Abernathy's office to discuss the conclusions reached in the *UNE-P Fact Report*, a copy of which was distributed at the meeting. A copy of the *UNE-P Fact Report* is attached to this letter.

In accordance with Section 1.1206 of the Commission's rules, an original and one copy of this letter is being filed with your office.

Sincerely,



Genevieve Morelli

cc: Christopher Libertelli
Matthew Brill

The UNE-P Fact Report

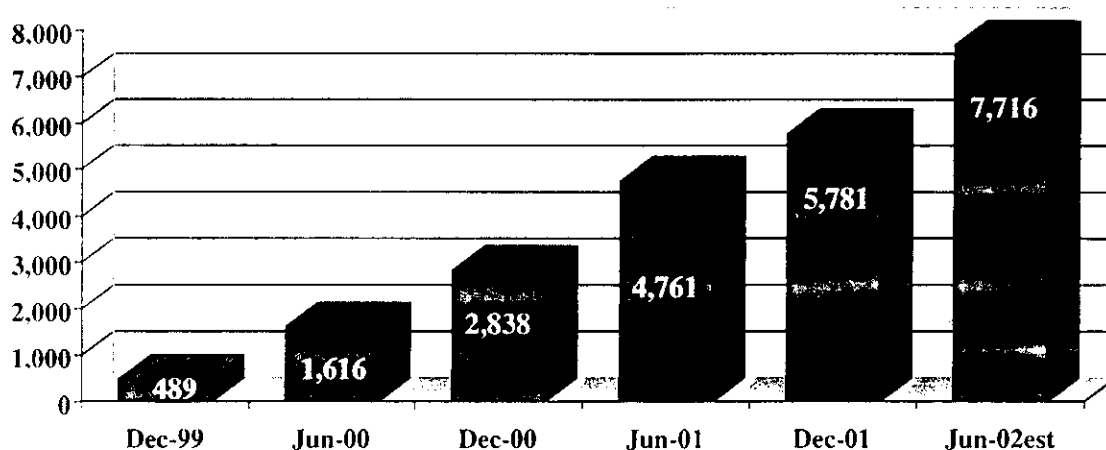
The PACE Coalition
August 2002

The UNE-P Fact Report: August 2002¹

It has been six years since the Federal Communications Commission first adopted regulations giving effect to the unbundling provisions of the federal Telecommunications Act. These unbundling provisions opened, for the first time, the inherited network facilities of the incumbent local monopolies to competitive use. In order for unbundling to result in meaningful local competition, however, required that exchange facilities be offered in arrangements that were commercially useful.

The unbundled network element platform (UNE-P) provides the answer by offering entrants a generic local switching and transmission "platform" that can be used to offer local services.² Just as "equal access" made long distance competition a reality 20 years ago by opening the exchange network to competitors in *one* of its uses (i.e., access to long distance competitors), UNE-P supports full local competition by providing competitors access to the exchange network in order to offer *all* services.

**Growth of UNE-P
(Thousands of lines)³**



Although the incumbents delayed offering UNE-P for a number of years, once introduced it demonstrated a powerful ability to bring competitive benefits broadly to the mass market. As of June 2002, approximately 7.7 million lines enjoyed competitive choice as result of UNE-P.

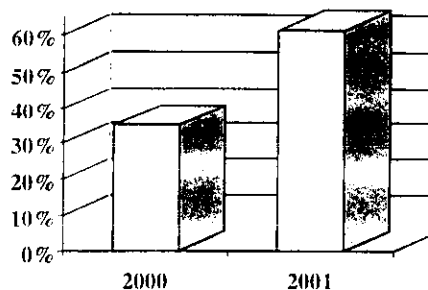
¹ The UNE-P Fact Report is published twice annually by the PACE (Promoting Active Competition Everywhere) Coalition.

² The unbundled network element platform is the combination of network elements (principally the loop, local switching and shared transport) that underlie exchange service.

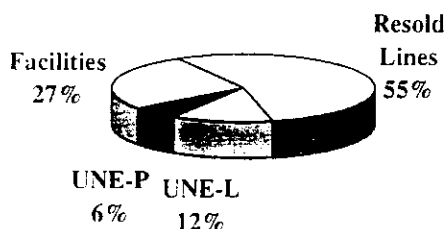
³ Source: FCC Local Competition Report (data through December 2001), released July 23, 2002. UNE-P volumes for June 2002 are estimated based on RBOC quarterly earnings information for the 2nd Quarter 2002.

As UNE-P became a practical reality, it invigorated the competitive landscape, quickly becoming the principal driver of competitive growth. During 2001, UNE-P was responsible for more than 60% of the growth in competitive access lines, roughly twice what it had been responsible for in the prior year.⁴ UNE-P is particularly critical to competition in the core of the incumbent's monopoly, the typical residential and small business customer that remains interested in analog service for its basic communications needs. UNE-P is today emerging as the leading entry strategy in this important market segment.

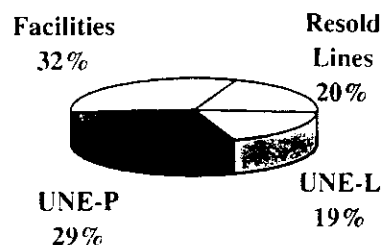
Percentage of CLEC Growth
Attributable to UNE-P



Entry Mix: December 1999

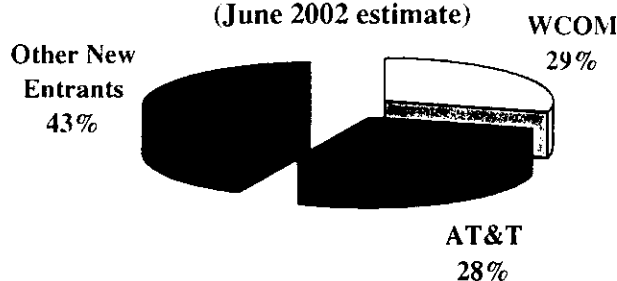


Entry Mix: December 2001



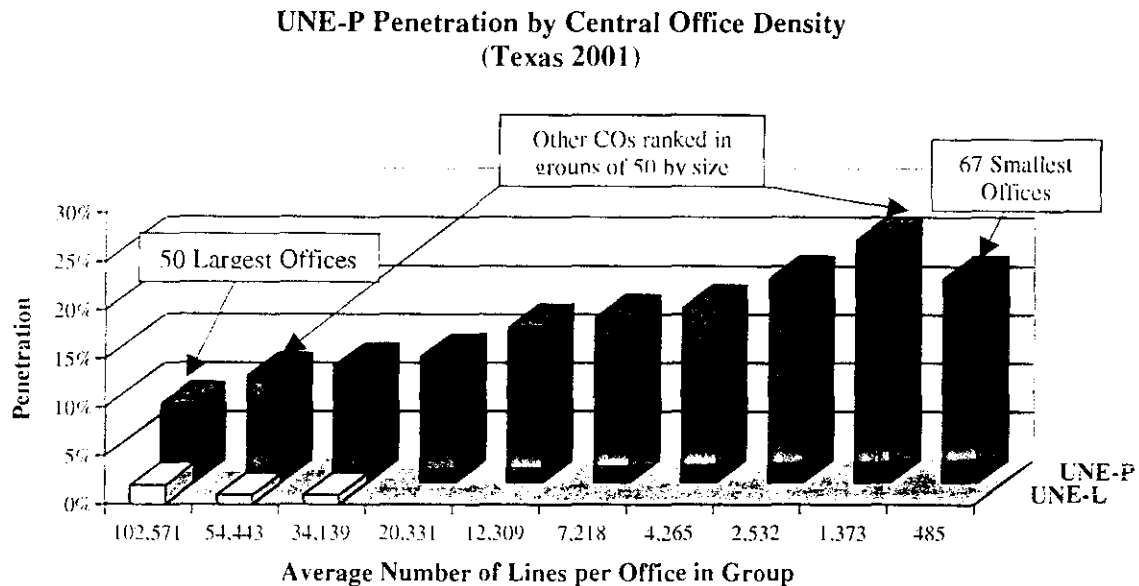
One of the reasons that UNE-P is so successful is that it is uniquely structured to support mass-market competition. UNE-P provides the entrant with economic control of its leased facilities, thereby providing entrants an ability to structure "all-distance" products that blur traditional lines between local and long distance service. Moreover, with UNE-P the entrant gains access to the full functionality of the local switch, enabling it to offer feature-rich service packages that consumers desire. This flexibility can be combined with the entrant's customer care infrastructure to assure responsiveness to customer needs. Because of its speed to market, flexibility and broad application, UNE-P has provided the foundation for a new wave of smaller entrants with innovative ideas.

The Distribution of UNE-P
(June 2002 estimate)



⁴ Source: FCC Local Competition Report, July 23, 2002.

Perhaps most importantly, because subscribers can be reliably and inexpensively migrated between the incumbent and new entrants, UNE-P is ideally suited to support competition across a broad range of customers and geographic areas without the same concerns for density that limit other strategies. As illustrated by actual market data from Texas (one of the first States to make UNE-P commercially available), UNE-P extends competitive choice from the largest to the smallest wire centers, resulting in a competitive profile that no other strategy can match.⁵ In the 50 largest wire centers in Texas (where the average central office serves more than 100,000 access lines), the UNE-P penetration rate is 8%, while at the other end of the spectrum (in the bottom tier of Texas' COs that serve, on average, only 485 lines), UNE-P's penetration is even greater (over 20%).



UNE-P is only capable of *extending* urban competition to rural markets, however, if it is *universally* available. The reason competitive choice is enjoyed in rural Texas is because UNE-P is also able to compete in urban markets. Significantly, more than ½ of the total UNE-P lines in Texas are located in the top 2 tiers (i.e., the 100 largest wire centers), providing the market foundation that enables UNE-P to be offered across the rest of the state. In contrast, virtually all of the UNE-L lines in Texas can be found in the top three tiers, with no meaningful expansion into less dense areas. Additional analysis in other states confirms that this relationship is not limited to Texas⁶ – UNE-P based competition develops broadly, while other entry strategies remain highly targeted.⁷

⁵ Docket 24542, Public Utility Commission of Texas.

⁶ See Docket No. 14361-U (Georgia Public Service Commission) and Docket No. 02-00207 (Tennessee Regulatory Authority).

⁷ Moreover, it is clear from empirical data that new entrants *do not* view UNE-P and other forms of entry, such as UNE-L, as substitutes. A number of policy papers sponsored by Z-Tel Communications

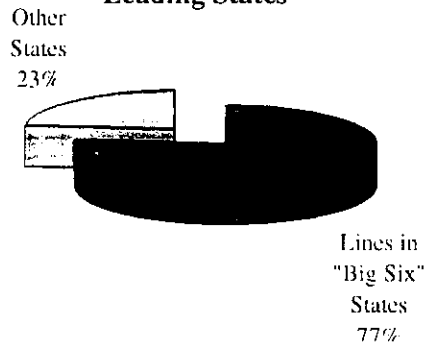
Fundamentally, the practical availability and economic attractiveness of UNE-P is determined on a state-by-state basis, through the effort of each state's Public Service Commission. As shown below, the national leaders in bringing competitive choice to the local marketplace are the states of New York, Texas, Michigan, Illinois, Pennsylvania and Georgia. A listing of each states' progress making UNE-P commercially useful is provided in the "National UNE-P Report Card" attached to this report.

States with Most Active UNE-P Competition

State	Holding Company	UNE-P Lines (2001)	UNE-P Growth	Share (2001)	National Rank	
					Lines	Growth
New York	Verizon ⁸	1,776,191	296.791	19.5%	1	4
Texas	SBC	1,305,417	415.573	15.6%	2	1
Michigan	SBC	422,281	414.013	8.5%	3	2
Illinois	SBC	301,924	298.034	4.7%	4	3
Pennsylvania	Verizon	291,335	202.558	5.2%	5	5
Georgia	BellSouth	232,266	154.198	5.9%	6	6

Importantly, each of the "big six" states listed above has either taken action -- or has a request pending before it -- to ensure that UNE-P will continue to be available in its jurisdiction. For instance, New York has conditioned Verizon's price cap plan on the continued availability of UNE-P. Illinois statute requires that any ILEC choosing alternative regulation must offer UNE-P, and the Texas Public Utility Commission has recently conducted a rigorous examination of competitive conditions in that State, finding that "...UNE-P is the only viable entry strategy mechanism that readily scales to varying sized exchanges to serve the mass market ...".⁹ Similar requests are pending before the Michigan and Georgia Commissions.

Concentration of UNE-P in Leading States



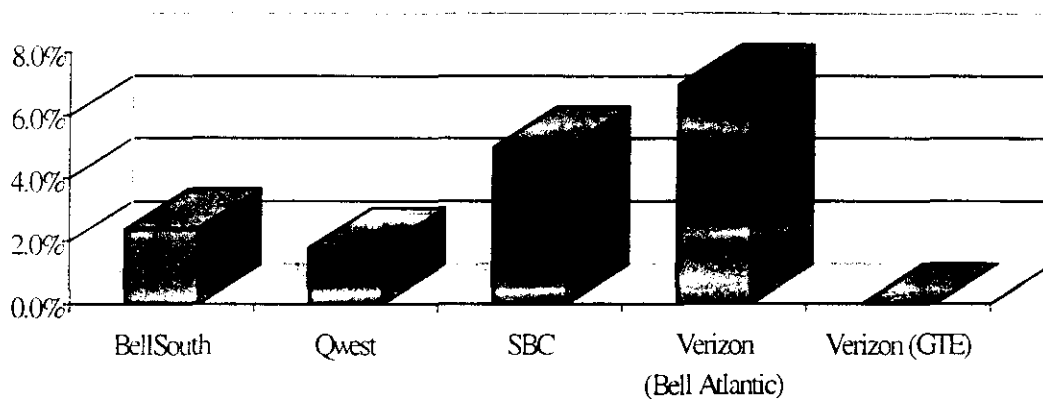
have shown that raising the price or restricting the availability of UNE-P will not increase UNE-L entry -- indeed, where UNE-P is artificially restricted, CLECs are *less* likely to deploy new network facilities. This result is consistent with the evidence above that UNE-P supports mass-market residential and small business entry, while other forms of competitive entry are better-suited for medium and larger businesses with intensive data communications needs

⁸ Verizon results do not include legacy GTE properties where the development of local competition generally lags the rest of the country.

⁹ Arbitration Award, Public Utility Commission of Texas Docket 24542, page 94.

Reflecting the work of these state commissions, UNE-P penetration is most successful in the areas served by SBC and selected states in the Verizon region. As illustrated below, however, UNE-P remains stalled in areas served by Verizon's former GTE properties, including those areas (such as California, Hawaii and Florida) where GTE serves major metropolitan areas.¹⁰

Regional Penetration of UNE-P



While practical experience offers compelling evidence of UNE-P's ability to finally extend the benefits of local competition to the mass market, it would appear that such benefits will likely be denied consumers and small businesses in Verizon's GTE territories for the foreseeable future. Whether local competition continues to develop – or, in the case of Verizon-GTE, ever becomes a reality – depends upon the continued efforts of State Commissions overseeing their markets.

¹⁰ Verizon withheld UNE-P statistics in the public release of its Local Competition Reports because it claimed that UNE-P activity was sufficiently modest that producing data could violate confidentiality.

The National UNE-P Report Card

State	Holding Company	UNE-P as of December 2001			National Rank		
		2001 Gain	Total Lines	Share	Gain	Lines	Share
Alabama	BellSouth Corporation	29,970	50,689	2.7%	17	15	15
Arizona	Qwest	20,334	20,334	0.7%	24	30	35
Arkansas	SBC Communications, Inc.	13,550	20,423	2.1%	31	29	18
California	SBC Communications, Inc.	72,164	80,034	0.5%	11	11	39
Colorado	Qwest	78,122	78,122	3.0%	10	12	13
Connecticut	Verizon (Bell Atlantic)	WH	WH	WH			
Connecticut	SBC Communications, Inc.	12	12	0.0%	41	47	47
Delaware	Verizon (Bell Atlantic)	WH	528	0.1%		45	44
DC	Verizon (Bell Atlantic)	WH	794	0.1%		44	45
Florida	BellSouth Corporation	85,630	135,719	2.2%	8	7	17
Georgia	BellSouth Corporation	154,198	232,266	5.9%	6	6	9
Idaho	Qwest	10,496	10,496	2.0%	34	35	21
Illinois	SBC Communications, Inc.	298,034	301,924	4.7%	3	4	11
Indiana	SBC Communications, Inc.	6,801	6,801	0.3%	36	37	41
Iowa	Qwest	116,404	116,404	11.9%	7	8	4
Kansas	SBC Communications, Inc.	44,694	84,282	7.0%	13	9	8
Kentucky	BellSouth Corporation	14,207	23,962	2.0%	30	26	2
Louisiana	BellSouth Corporation	22,658	31,271	1.4%	22	22	29
Maine	Verizon (Bell Atlantic)	WH	WH	WH			
Maryland	Verizon (Bell Atlantic)	10,998	14,158	0.4%	33	33	40
Massachusetts	Verizon (Bell Atlantic)	32,915	56,387	1.4%	16	14	28
Michigan	SBC Communications, Inc.	414,013	422,281	8.5%	2	3	6
Minnesota	Qwest	80,657	80,657	3.9%	9	10	12
Mississippi	BellSouth Corporation	18,175	24,182	1.9%	27	25	24
Missouri	SBC Communications, Inc.	25,315	67,899	2.8%	19	13	14
Montana	Qwest	2,692	2,692	0.7%	39	42	34
Nebraska	Qwest	3,529	3,529	0.8%	38	41	33
Nevada	SBC Communications, Inc.	18	18	0.0%	40	46	46
New Hampshire	Verizon (Bell Atlantic)	WH	6,096	0.9%		38	31
New Jersey	Verizon (Bell Atlantic)	WH	33,214	0.5%		21	38
New Mexico	Qwest	4,547	4,547	0.5%	37	39	37
New York	Verizon (Bell Atlantic)	296,791	1,776,191	19.5%	4	1	1
North Carolina	BellSouth Corporation	19,156	42,382	1.7%	26	18	25
North Dakota	Qwest	22,961	22,961	13.0%	21	27	3
Ohio	SBC Communications, Inc.	49,048	49,048	1.2%	12	17	30
Oklahoma	SBC Communications, Inc.	22,986	36,199	2.3%	20	19	16
Oregon	Qwest	20,078	20,078	1.5%	25	31	27
Pennsylvania	Verizon (Bell Atlantic)	202,558	291,335	5.2%	5	5	10
Rhode Island	Verizon (Bell Atlantic)	WH	4,536	0.8%		40	32
South Carolina	BellSouth Corporation	16,705	28,052	1.9%	29	23	22
South Dakota	Qwest	17,922	17,922	7.8%	28	32	7
Tennessee	BellSouth Corporation	34,777	50,555	1.9%	15	16	23
Texas	SBC Communications, Inc.	415,573	1,305,417	15.6%	1	2	2
Utah	Qwest	20,514	20,514	2.0%	23	28	19
Vermont	Verizon (Bell Atlantic)	WH	WH	WH			
Virginia	Verizon (Bell Atlantic)	7,315	8,285	0.3%	35	36	42
Washington	Qwest	35,909	35,909	1.5%	14	20	26
West Virginia	Verizon (Bell Atlantic)	WH	1,346	0.2%		43	43
Wisconsin	SBC Communications, Inc.	11,049	11,049	0.6%	32	34	36
Wyoming	Qwest	26,915	26,915	11.5%	18	24	5

WH: Withheld due to confidentiality claim by the RBOC.

Source: RBOC Form 477 (Local Competition) Filings with the Federal Communications Commission.

Note: Table accepts Qwest representation that lines reported as "UNE-P" are fully functioning UNE-P lines.